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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 150

FRANCES MATTIELLO,

Appellant,

v.

STATE OF CONNECTICUT,

Appellee.

ON APPEAL FROM THE APPELLATE DIVISION OF THE CIRCUIT COURT OF CONNECTICUT

REPLY BRIEF OF APPELLANT

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I.

The Judgment Under C.G.S. § 17-379 Is Within the Court's Jurisdiction to Review.

The appellee contends that this Court lacks jurisdiction in the instant case because appellant's conviction on the second and unappealed count is sufficient to sustain the concurrent sentences imposed. Appellee's brief, pp. 6-8. Appellee's underlying assumption is that the separate sentences under *C.G.S.* § 17-379 and § 53-219 are coextensive

as well as concurrent. Appellant argues, however, that the constitutionally permissible length of the § 53-219 sentence is substantially less than the sentence imposed under § 17-379. Moreover, she urges that her present custody is based solely on the "manifest danger" conviction. Thus, the rule originally announced in *Locke* v. *United States,* 7 Cranch 339, 344, 3 L.ed. 364, 366 (1813), and consistently followed by this Court, is inapplicable to this case.

Appellant previously argued that *United States ex rel. Robinson* v. *York,* 281 F.Supp. 8 (D.C.D. Conn. 1968), rendered a portion of her sentence under § 53-219 constitutionally invalid. See Appellant's Additional Response to Jurisdictional Statement at pp. 4-5. Since that time, two state decisions and one federal ruling have echoed the findings of *Robinson.* See Appendices A, B and C. Moreover, the Attorney General of Connecticut has ordered the release of certain inmates on the authority of *Robinson.* See Appendix D.

It appears clear that appellant is presently restrained only as a result of her conviction under § 17-379. Therefore, appellant having served the maximum permissible sentence under § 53-219, the judgment on that count should not act as a bar to the invocation of this Court's jurisdiction.

II.

The Conduct of the Appellant Cannot Overcome the Patent Vagueness of C.G.S. § 17-379.

The appellee has grounded his second argument on the assumption that § 17-379 "is not patently vague on its face." Appellee's brief at p. 7. The appellant would concede the merit of the argument if the appellee's assumption

were valid. However, appellant has demonstrated that the statute's vagueness is inherent and pervasive. Appellant's brief at pp. 9-13.

The question before this Court is whether "the section . . . is void *in toto*, barring all further actions under it, in this, and every other case." *United States* v. *Petrillo,* 332 U.S. 1, 6 (1947). If, as appellant urges, the answer is in the affirmative, there is no necessity to examine her conduct and question whether it is worthy of sanction. As the Court noted in *Thornhill* v. *Alabama,* 310 U.S. 88, 96 (1940):

> There is no occasion to go behind the face of a statute or of the complaint for the purpose of determining whether the evidence, together with the permissible inferences to be drawn from it, could ever support a conviction founded upon different and more precise charges.

Accord, Lanzetta v. *New Jersey,* 306 U.S. 451, 453 (1939). *See also,* Note, *The Void for Vagueness Doctrine in the Supreme Court,* 109 U. Pa. L. Rev. 67, 97 (1960).

The lodestar that has guided this Court's examination of vagueness claims is that the statute must first be examined "on its face." If the form is found to be constitutionally indefinite, recourse to the facts proved cannot save the inherent defect. *Winters* v. *New York,* 333 U.S. 507, 509 (1948). Such is the test applicable in the instant case.

Conclusion

For the reasons stated above and set out in Appellant's Brief, this Court should reverse the judgment and sentence of the Appellate Division of the Circuit Court of Connecticut and hold that C.G.S. § 17-379 is unconstitutional as applied to unmarried females between the ages of sixteen and twenty-one.

Respectfully submitted,

ROBERT N. GROSBY,
JOSEPH D. HARBAUGH,
Attorneys for Appellant.

September 13, 1968.

APPENDICES

APPENDIX A

Liberti v. *York*

CONNECTICUT SUPERIOR COURT

SUPERIOR COURT

NEW LONDON COUNTY

July 29, 1968.

No. 35212

ELIZABETH LIBERTI,

v.

JANET S. YORK, Superintendent Conn. State Farm for Women, Niantic.

MEMORANDUM OF DECISION

On May 5, 1967, the petitioner pleaded guilty to one count of Breach of Peace, G.S. § 53-174, before the Seventh Circuit Court in Meriden, and was sentenced for an indefinite term to the Connecticut State Farm for Women.

The defendant claims the petitioner was committed under G.S. § 17-360 which, in the case of women over sixteen years of age, may be for an indefinite period but not to exceed three years.

The breach of the peace statute provides for a penalty of a fine of not more than $500 or imprisonment of not more than one year or both.

On November 15, 1967, petitioner was paroled and on February 15, 1968, was found in violation of parole and returned under the authority of the original sentence of May 15, 1967.

The petitioner contends that since the breach of peace statute has a maximum sentence of one year this is the limit of her commitment and a sentence under G.S. § 17-360 vio-

lates the equal protection clause of the United States Constitution in that it provides for differential treatment in the case of adult males who could be committed for no longer than one year. It is also claimed that under Gen. St. § 54-1a the Circuit Court can "impose no greater punishment than . . . imprisonment for one year. . . . "

Recognition must be given to the fact that wide discretion is essential in enacting reasonable classifications for criminal penalties in promoting the safety and welfare of a state. But any such classification must have a legitimate basis for the purposes involved.

The state contends the State Farm for Women is a correctional and not a penal institution; that its goals and the efforts of its staff are directed toward rehabilitation and training of its inmates; and that only those women may be committed to said institution "who in the opinion of the trial court will be benefited physically, mentally or morally by such commitment."

This may be idealistically sound but it assumes that a greater period of restraint is necessary in the case of women and that they require a longer period of rehabilitation to again become useful members of society. Factually and statistically there is no basis for any such finding.

There is no reasonable basis for the claim that, for the same offense, breach of the peace, women should be subjected to a possible three year term where men are limited to one year.

The sentence in this case is a discrimination against the petitioner which is in violation of the equal protection of the laws guaranteed by the fourteenth amendment, and the sentence given is one beyond the jurisdiction of the Circuit Court.

Gen. St. § 54-1a.

While the sentence is in excess of what the statute permits, it is not invalid in its entirety but only as to that portion which exceeds the statutory authority.

U.S. v. Pridgeon, 153 U.S. 48, 62.

Judgment for the petitioner may enter in accordance with this opinion.

DEVLIN, J.

APPENDIX B

Bourgoyne v. *York*

CONNECTICUT SUPERIOR COURT

SUPERIOR COURT

NEW LONDON COUNTY

July 29, 1968.

No. 35290

THERESA BOURGOYNE,

v.

JANET S. YORK, Superintendent State Farm for Women.

MEMORANDUM OF DECISION

The petitioner was found guilty in the 12 Circuit Court in Hartford of two counts of obtaining money by false pretences and given an indeterminate sentence to the Connecticut State Farm for Women on each count.

Jurisdiction of the Circuit Court is limited to "a fine of $1,000 or imprisonment for one year, or both."

Gen. St. § 54-1a.

Claim is made by defendant that under Gen. St. § 17-360 the maximum term of the commitment is three years and this determines their jurisdiction.

Any sentence, the effect of which is to imprison the petitioner for a period exceeding one year is beyond the jurisdiction of the court.

While the sentence in this case can[not] be in excess of the jurisdictional power of the court, it is not invalid in its entirety but only as to that portion which exceeds the statutory authority of one year.

U.S. v. Pridgeon, 153 U.S. 48, 62.

Judgment may enter accordingly.

DEVLIN, J.

APPENDIX C

United States ex rel. Sumrell v. *York*

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. 12,659

[—— F. Supp. —— (1968),
Filed August 1, 1968]

UNITED STATES *ex rel.* ADA SUMRELL,

v.

JANET S. YORK, Superintendent, Connecticut State Farm for Women.

RULING ON PETITION FOR A WRIT OF HABEAS CORPUS

The petitioner, Ada Sumrell, is a state prisoner presently confined at the Connecticut State Farm for Women, in Niantic. She seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, and permission to proceed in forma pauperis, 28 U.S.C. § 1915. Her sole claim is that the statute under which she was sentenced, Connecticut General Statutes, § 17-360,[1] violates the equal protection clause of the Fourteenth Amendment to the United States Constitution in that it allows women to be imprisoned for longer periods of time than men convicted of identical offenses.

The petitioner was convicted on September 22, 1964 of violating a Bridgeport City ordinance against loitering and was sentenced to an indefinite term in the State Farm. She was released on parole and was thereafter arrested on a charge of aggravated assault; CONN. GEN. STAT. (REV.

1958) § 53-16. After having pleaded not guilty to this charge in the Superior Court for Fairfield County, a substituted information was filed charging her with breach of peace, CONN. GEN. STAT. (REV. 1958) § 53-174, an offense punishable by not more than one year in jail, a fine of up to five hundred dollars, or both. She pleaded guilty to this latter charge and was sentenced to the State Farm for an indefinite term to run concurrently with the prior term. It is this sentence which is the basis of her present incarceration and gives rise to this petition.

I. EXHAUSTION:

Respondent claims that this Court is without jurisdiction, because the petitioner has failed to exhaust her state remedies. She is represented by an attorney associated with the Bridgeport Legal Services Committee, Inc., an office sponsored by the Federal Office of Economic Opportunity. On May 23, 1968, this same attorney attempted to file separate petitions for a writ of habeas corpus in the Court of Common Pleas and Superior Court for New London County. These were both rejected by the clerks of the respective courts, because they were not accompanied by the required entry fees. While affidavits establishing the petitioner's indigency were filed with said petitions, under the rule of the state courts the entry fee can be waived only where the individual is represented by the Public Defender or a Special Public Defender appointed by the Court. (Petitioner's Exhibit C.)

It is the rule in this District that when an indigent state prisoner tenders a petition for a writ of habeas corpus which is rejected, because of her inability to pay the entry fee, the exhaustion requirement of 28 U.S.C. § 2254(b) has been satisfied. *United States ex rel. Robinson* v. *York*, Civil No. 12,376 (D. Conn. Feb. 28, 1968); *United States ex rel. Rush* v. *York*, Civil No. 12,173 (D. Conn. Nov. 28, 1967), 42 Conn. B.J. 74. That rule adhered to.

II. DENIAL OF EQUAL PROTECTION:

In *United States ex rel. Robinson* v. *York, supra,* the Court held that it is constitutionally impermissible for the state to imprison adult women for longer terms than adult men under similar circumstances, who are convicted of the same substantive offense. That case differs from the case at bar in two respects: the petitioner in that case was more than twenty-one years of age when sentenced, and her commitment was ordered by the State Circuit Court. These differences are relevant in that they require a consideration of statutes other than those involved in *Robinson.* Section 17-389 of the Connecticut General Statutes (REV. 1958, 1966 Supp.), provides for the commitment of males between the ages of sixteen and twenty-one years of age to the reformatory under certain conditions. Section 17-390 provides in pertinent part:

> "An offender sentenced to the reformatory for an offense for which the maximum punishment is a sentence to a jail, with or without a fine, may be retained in the reformatory not more than two years."

It appears from a reading of this section that a minor male who is convicted in the Superior Court of a breach of the peace, an offense for which the maximum punishment is a sentence in jail and a fine, may be committed to the reformatory for a maximum of two years. Under § 17-360, a minor female convicted of the same offense must be sentenced for an indefinite period of up to three years. The state has pointed to no rational basis for this difference in treatment between minor males and minor females, either with respect to the rehabilitative or the deterrent aspects of incarceration.

> "A classification by sex alone would not, per se, offend the Equal Protection Clause of the United States Constitution. For example, there are undoubtedly significant biological, natural and practical differences

> between men and women which would justify, under certain circumstances, the establishment of different employment qualification standards . . . . We are convinced, however, that the considerations and factors which would justify a difference between men and women in matters of employment, as well as in a number of other matters, do not govern or justify the imposition of a longer or greater sentence on women than is imposed upon men for the commission of the same crime." *Commonwealth* v. *Daniels* (Penn. Sup. Ct.), 37 L.W. 2063, 2064 (7/30/68).

The Court holds, therefore, that the imposition of an indefinite sentence on this petitioner pursuant to the provisions of § 17-360 constitutes the type of arbitrary and invidious discrimination which the Equal Protection Clause of the XIV Amendment to the Federal Constitution is designed to guard against. *United States ex rel. Robinson* v. *York, supra.*

The state claims that under § 17-389 males can be sentenced to the reformatory for up to five years for the commission of a misdemeanor and thus females receive more favorable treatment. This section, when read in conjunction with § 17-390, must be reconciled with the overall statutory scheme, and is not to be read as giving the Court such authority. Its purpose is only to specify those persons eligible for commitment to the reformatory, the types of sentences which may be imposed, and the maximum thereof in general.

Since the petitioner has served more than two years of the sentence for breach of the peace (said two year term having been completed June 3, 1968), the maximum which might be constitutionally imposed,

IT IS ORDERED, that the respondent shall absolutely discharge the petitioner from custody as promptly as possible consistent with administrative regulations at the State Farm for Women. A copy of this memorandum and

order shall be forwarded forthwith by the Clerk of this Court, not only to counsel of record but also to the respondent herein.

This opinion constitutes the Court's findings of fact and conclusions of law.

If an appeal from the foregoing order is desired, this will constitute a certificate of probable cause under 28 U.S.C. § 2253.

Dated at Hartford, Connecticut,
this 31st day of July, 1968.

T. EMMET CLARIE
United States District Judge.

APPENDIX D

Letter of Attorney General Killian

August 5, 1968

Hon. Ellis C. MacDougall
Commissioner of Correction
State Capitol
Hartford, Connecticut

Dear Commissioner MacDougall:

As you know from the conferences we have had, a problem has arisen as a result of the Robinson and Liberti decisions concerning the status of a certain class of inmates at the State Farm For Women.

Recently, the United States District Court (Blumenfeld, J.), granted a petition for writ of habeas corpus ordering that Carrie Robinson, an adult female, be discharged from the custody of the State Farm For Women as promptly as possible consistent with administrative regulations.

Subsequently, Elizabeth Liberti, also an adult female, was granted a writ of habeas corpus in the Superior Court for New London County in a decision which was handed down (Devlin, J.) August 1, 1968.

Mrs. Robinson was convicted of the crimes of breach of peace and resisting arrest on November 18, 1966 and committed to the State Farm For Women under Section 17-360 of the 1965 Supplement to the General Statutes. On November 11, 1967 she was again presented before the Ninth Circuit Court and pleaded guilty to two (2) charges of intoxication and willful destruction of property. The sentences imposed on these two counts were suspended and Mrs. Robinson was returned to the State Farm as a parole violator under the original sentence. The maximum term to which an adult male found guilty of breach of peace may

be sentenced is one (1) year and the maximum term for an adult male found guilty for resisting arrest is six (6) months. See Sections 53-174 and 53-165, respectively.

On May 5, 1967 Elizabeth Liberti, an adult female, pleaded guilty to one count of breach of peace (G.S. Section 53-174) and was sentenced under Section 17-360 to an indefinite term at the Connecticut State Farm For Women.

The sentences for both of the above cases were challenged in court actions; the first before the United States District Court and the latter case being decided by the Superior Court for New London County. In each case the court arrived at the same result on substantially the same reasoning. Both of the above named persons were committed under Section 17-360 which in brief provides that a person sentenced to an indeterminate term may be held for not longer than three (3) years as an inmate of the institution. Inasmuch as adult males could be held no longer than one (1) year for breach of peace and six (6) months for resisting an officer, both courts held that it is constitutionally impermissible for the State to confine adult women for longer terms than adult males when they are convicted of the same substantive offense.

In view of these court decisions it is our opinion that adult females now confined in the State Farm For Women as a result of being committed to indeterminate sentences under Section 17-360 who have been convicted of crimes the penalty for which is less than three (3) years when applied to adult males should be discharged from the State Farm For Women as soon as it is administratively convenient, provided, of course, they have served the maximum term provided by statute for the particular offense for which each has been convicted. This rule applies only to inmates who had attained the age of twenty-one (21) years or more at the time of conviction and is strictly limited to the situations presented in the Robinson and Liberti

cases. If you have any further questions concerning this matter, please contact us immediately.

Very truly yours,

ROBERT K. KILLIAN
Attorney General

By: .....
Raymond J. Cannon
Assistant Attorney General

RJC:M
cc:
JANET S. YORK,
State Farm For Women

HON. JOHN J. DALY
Chief Judge of Circuit Court